THE RAILROAD QUESTION.

SPEECH

OF

OLIVER E. BRANCH,

REPRESENTATIVE FROM WEARE,

IN THE

House of Representatives in favor of the Hazen Bill,

SEPTEMBER 13, 1887.

Concord, N. H.
PRINTED BY THE REPUBLICAN PRESS ASSOCIATION.
1887.

THE RAILROAD QUESTION.

SPEECH

OF

OLIVER E. BRANCH,

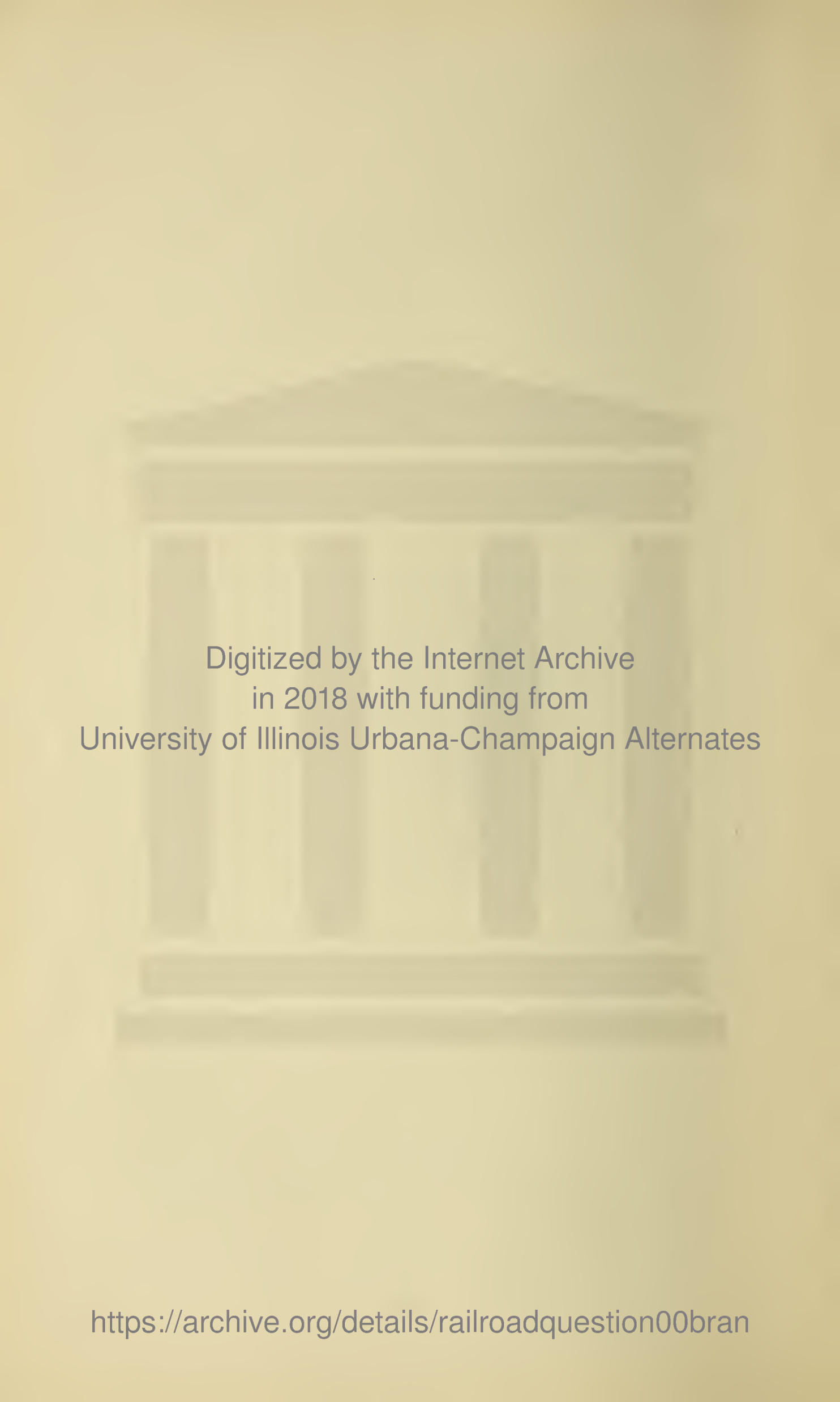
REPRESENTATIVE FROM WEARE,

IN THE

House of Representatives in favor of the Hazen Bill,

SEPTEMBER 13, 1887.

Concord, N. H.
PRINTED BY THE REPUBLICAN PRESS ASSOCIATION.
1887.



SPEECH.

Mr. Speaker and Gentlemen:

Railroads are creatures of the law. They come into existence by the consent and operation of the law, depend upon it for their continuance, move within such limitations as the law prescribes, and are possessed of such rights and charged with such duties as the law enumerates. Railroads are of necessity monopolies. There is a contract between every railroad company and the state, by the terms of which, in consideration of the right to be a monopoly, which the state confers upon the railroad company, the railroad company consents to be and to become a public servant. The dream of a golden age in the future, when railroads will not be monopolies, will never come true. The vision of two railroads, or two railroad systems, that will consent to do business for nothing, out of love for the public and to feed fat a mutual grudge, will never be realized; and whether the transportation service of the state be done by one company or by six, with a capital of $1,000,000 or $100,000,000, it will be a monopoly still. Railroads being a creation of the law, it follows that the history of railroad development is a history of railroad legislation. One follows and reflects the other.

There are three periods of railroad legislation and railroad development in this country,—construction, competition, and consolidation. The period of construction, pure and simple, has passed. The period of competition, as a regulator of rates, has passed. The period of consolidation, under state control, has come. The Granger laws, as they were called, closed substantially the period of competition in this country. They were an attempt by law to regulate in detail passenger and freight charges. They were a protest against the theory of competition as a regulator of freight and fares, and an announcement

that so far from being a safeguard and a defence of the public against high charges, competition is so only to a limited extent, and that in its general, comprehensive result competition is ruinous both to the public and to the railroads. These laws have been repealed. They have given place to the policy which now prevails in almost every state in this country, a policy which England settled upon long ago, viz., consolidation coupled with state control operating through the agency of a railroad commission.

I claim, gentlemen, that the policy of consolidating railroads, whether of continuous or competing lines, under the management of the state, as I have indicated, is now conceded, accepted, and admitted by everybody who has given the matter any considerable study or investigation to be the only policy that has resulted in any permanent good to the public, and that for more than sixteen years railroad legislation of the most progressive and advanced states of the world has been in that direction. Judge Bingham concedes that the consolidation of connecting lines is the proper policy, but not of different independent lines,—independent, continuous lines, as he terms them ;—but can Judge Bingham or anybody else tell us why a railroad company is less powerful when it has one line 500 miles long than it is when it has two lines 250 miles long? He professes to be alarmed at the policy that will permit the consolidation of different independent lines ;—but why is a company more powerful when its lines are divergent than when they are continuous? Now, gentlemen, the same advantages precisely, which follow the consolidation of separate, continuous lines, come from the consolidation of independent lines where they can be managed from a common centre. What are the advantages? Why, first, enormous reductions in operating expenses,—I believe the gentleman from Manchester, Mr. Sulloway, said from 33 to 50 per cent. : greater despatch in the transportation of freight, greater facility in the handling of freight, is secured, all of which results in lower freights and fares, besides, which is not its least advantage, increased responsibility, which always produces increased caution, and a more ready response to the demands of the public for railway accommodations.

Now, gentlemen, I want to read one or two extracts bearing

upon the wisdom of railroad consolidation. First, I call your attention briefly to something that was said here in 1883 by Judge Cross, when he was advocating the passage of the Colby bill. He says,—"In the first place, I submit that all the reason and all the arguments that I have advanced in favor of a general law for organizing railroads under a general law apply with equal force to a general law for leasing and consolidating." It would seem that Judge Cross had been discussing that bill as though it provided for building under a general law, and then he proceeds to discuss it under the phase of consolidating under the general laws. "I confess that I have changed my views in regard to consolidating. There is in the state, I know, a sort of feeling or sentiment that consolidating is bad or dangerous to the people. I thought so once; but an examination and study of the railroad problem have satisfied me that it is the inevitable law of railroad progress, and that whatever we may do here in New Hampshire, in other states, and in other countries, consolidation of railroads must and will follow: yes, and it is already an accomplished fact." Further, he says,—"I submit that this talk about railroad kings and great capital is, in the words of Charles Francis Adams on the same topic, 'unmitigated cant.' It is the talk of men who either have not investigated, or act the part of demagogues. Col. George, with all men who have investigated, says that the greater the corporation, the greater the capital and profits, the less influence it has to affect and control legislation, and the greater demand the public makes for lower fares and better accommodations. The legislature has the absolute and the entire control of all the railroads in the state, whether separate or consolidated." That is the statement of Judge Cross, a lawyer of eminence in this state, and a man who had evidently given this subject considerable study and investigation. That is his deliberate utterance upon this topic in 1883. Other men of equal intelligence and culture have investigated the same subject, and have come precisely to the same conclusion.

I want to read a few words from the editorial article that appeared in the Nashua *Telegraph* at the time this bill was under discussion, presumably the utterance of the distinguished gentleman from Nashua, Mr. Moore. He says,—"When two cor-

porations become one by lease or consolidation, the state has one party less to deal with. This is an advantage in so far as simplification and directness are concerned. The state and the people have no more capital arrayed against them when two corporations are united than when they are separated, unless there is stock watering in effecting the union. The power of the united corporations is not so great in some respects as the separate corporations, because there are not so many 'sticks' in the bundle, counting directors, treasurers, and presidents as sticks, and they are the main ones in all consolidations. All the terrors that are sought to be aroused by invoking the names of Fisk and Gould and Vanderbilt are based on a misconception." How cheering and comforting these words must be to my distinguished friend from Manchester, Mr. Sulloway. "Those railroad barons were the product of a stage of railroad development that brought consolidation without state regulation, and to which all existing abuses are attributable. We may denounce consolidation as much as we please, but it is actual everywhere. Under such a state of things consolidated management under rigid state control has less public peril than independent management under feeble regulation as it now is in this state. The latter is consolidation with no regulation: the former is consolidation with regulation. The one is the rule of the people and the state by the railroad barons: the other is the rule of the railroad barons by the state and people." I hold in my hand a book entitled "Railroads: their Origin and Problems," edited by Charles Francis Adams, who, probably, is the most distinguished and enlightened railroad writer in this country, and he has something to say upon this subject of consolidation which is exactly in line with the utterances of my friend Judge Cross, and the gentleman from Nashua, Mr. Moore. He says,— "Of all foreign experiences, that of England most resembles that of our own. The only essential difference is, that England is wealthier and infinitely more compact than the United States, so that, as respects railroads, causes produce their results much more quickly there than here. Nowhere, however, is the present tendency towards the concentration of railroad interests in a few hands more apparent than in England. The mill of competition has there about fulfilled its allotted work. The whole

English railway system has now passed into the hands of a few great railroad companies, by whom the country is practically divided into separate districts. These are literally in the hands of monopolists. The practical result of this consolidation, as compared with the old-fashioned competition, was set forth in two concrete cases by the parliamentary Committee on Railways Amalgamation of 1872, in language which has already been quoted, but which in this connection will bear repetition. "The North-Eastern Railway is composed of thirty-seven lines, several of which formerly competed with each other. Before their amalgamation, they had, generally speaking, high rates and fares, and low dividends. The system is now a most complete monopoly in the united kingdom; from the Tyne to the Humber, with one local exception, it has the country to itself, and it has the lowest fares and highest dividends of any large English railway. It has had little or no litigation with other companies. While complaints have been heard from Lancashire and Yorkshire, where there are so-called competing lines, no witness has appeared to complain of the North-Eastern, and the general feeling in the district it serves appears favorable to its management." And further on he says,—"In this country as well as in Great Britain, those wise people who so earnestly point out the dangers incident to railroad concentration wholly ignore the important practical fact that concentration not only brings with it a corresponding increase of jealousy, but also an equally increased sense of responsibility. It is not the few great corporations which are politically dangerous, but the many log-rolling little ones. No one who has had experience in dealing before a legislative body with questions affecting railroad interests has failed to realize this fact. * * * * Little as those who expatiate on the subject seem to realize it, it is nevertheless true that each new railroad the Vanderbilt, or the Jay Gould, or the Huntington interest acquires, the more cautious and conservative they become. They realize the responsibility and danger of their position, if their critics do not. The only present difficulty is, that those who undertake to represent the community neither understand the situation nor know how to take advantage of it."

So much, gentlemen, upon the theory and policy of consolida-

tion. Now, in 1883 the state of New Hampshire decided to abandon the policy of railroad legislation which it had pursued for half a century, which was well enough suited to the condition of the state and its business at the time it began, and to the experimental and formative period of railroad development, and at a single stride placed herself abreast of the most progressive states of the world in that regard by the enactment of a general railroad law and a law establishing the board of railroad commissioners. In plain, comprehensive language and in the most explicit terms she discarded the theory of special legislation, and at the same time brought into view and into effective and practical operation the absolute power of the state over railroads in all matters touching the public welfare. It has been argued that a general railroad law is not a law which provides for consolidating and leasing, but is simply a law which provides generally for building. That is the argument of the gentleman from Manchester. Nothing can be more erroneous than such a statement as that. A general railroad law is a general law which takes the place of all special laws, enabling railroad companies to do *anything* that railroad companies *can* do; and if you will look at the general railroad laws of every state where they obtain, you will find that they provide for construction, long leasing, and consolidation.

Two different constructions have been placed upon this law of 1883 called the Colby act. One corresponds to the suspicions which the gentleman from Atkinson, Mr. Todd, had of it when it was under discussion in the house. It seems that they had been discussing it as though it were a general railroad law, because Mr. Todd said,—"I object to this bill because it is not what it purports to be, a general railroad law, but a law to permit the general consolidation of the Concord and several other roads, and enable the Boston & Maine to lease the Eastern, which ends the friends of these schemes think would be better gained in this crafty way than by an open demand." Mr. Todd thought the act *purported* to be a general railroad law, but he had a suspicion, it seems, that somebody might construe it differently, and his suspicions have been verified. For now we find that one of these parties whom he says was scheming in that way comes up here and says that it was, after all, a special

law. Mr. Todd's suspicions were true. The suspicious view of this law, as announced by Mr. Todd, is the view now taken by the adherents of the Atherton bill. There is another construction which has been given to this law. It is the construction which was given to it by the gentleman from Nashua, Mr. Moore, in reply to Mr. Todd's suggestion. Mr. Moore says,— "The Colby bill is both a general railroad law and a bill to permit general consolidation and leasing. It does not purport to be anything else. The railroads have pretended nothing else. The only craft displayed in the matter is the request for general instead of special legislation. The one seeks a privilege free to all, the other aims at monopoly." This construction of the law of 1883, so clearly, so logically, so reasonably stated by my accomplished friend from Nashua, is precisely the construction which is now placed upon it by the friends of the Hazen bill. But it is said by the Concord road that this construction is not correct; that it was after all only the old kind of special legislation, and that it meant to confer upon the Boston & Maine the right to consolidate with the Eastern, and upon the Concord the right to consolidate with the two upper roads. Mr. Mitchell says, on page seven of his argument, that that was all that was designed to be accomplished by it.

Gentlemen, I venture to assert that such a construction of that law never would be made, unless it was compelled to be made by the stress and exigency of the Concord road in this contest. The title of the act alone demonstrates that: "An act providing for the establishment of railroad corporations by general law." If the act meant what Mr. Mitchell says it does mean, why was it not entitled An act to enable the Boston & Maine to lease the Eastern, and the Boston, Concord & Montreal to unite with the Northern and the Concord? Mr. Mitchell says that was its sole purpose—a special law to accomplish these two particular things. Well, gentlemen, did you ever hear of a special law before in which the beneficiary was not so much as named, or even hinted? No doubt these roads intended to avail themselves of the opportunities of that law. No doubt they passed resolutions in May favoring a consolidation; but their hopes and purposes and expectations and *resolutions* cannot now be taken to be the sole intent and purpose of the legis-

lature. What these railroad companies were seeking to do in May is one thing: what the legislature proposed to do in August is another thing. Why, gentlemen, it is as absurd as it would be for somebody to say that the ten-hour law and the weekly-payment law, which we have passed at this session of the legislature, were designed for the benefit of the Knights of Labor only, because they presented numerous petitions in behalf of those laws, and because, at their convention here last summer, they passed resolutions advocating the passage of those laws.

The gentleman from Manchester, Mr. Sulloway, in discussing this point last week, called our attention to the report of the railroad committee of 1883 upon the bill which was then pending, ratifying the lease of the Nashua & Lowell by the Boston and Lowell; and he argued to you that that report of the committee indicated that the Boston & Lowell road was not intended to be included within the scope of this law. Gentlemen, I say that report indicates exactly the opposite state of facts. Now, I want to ask right here, Does anybody suppose or believe that it was the deliberate, studied intention of the state of New Hampshire to exclude the Boston & Lowell from the operation of that act? Was it the intention of that act? Was it the intention of the state of New Hampshire to discriminate against that foreign corporation and not against others? Why, if there is any foreign corporation, any railroad at all that ought to be included in the law and not excluded, it is the Boston & Lowell, because of its intimate connection with the New Hampshire roads, and its importance as a connecting link to Boston. Now what does that report say?

"The present legislature has spent nearly three months in an effort to provide for the manner of making and perfecting unions and leases of New Hampshire railroads, under the provisions of house bill No. 46. Should that bill become a law, it seems obvious that it would be unjust to exercise a discrimination in favor of a Massachusetts corporation by conferring upon it rights and immunities which are not accorded to other railroads under the provisions of the general laws."

"Should that bill become a law, it seems obvious that it would be unjust to exercise a discrimination in favor of a Massachusetts corporation by conferring upon it rights and immuni-

ties which are not accorded to *other* roads under the provisions of the general law." "*Other* roads under the provisions of the general law." It would be unjust to give that road greater advantages than it gives the rest of the roads in the state, therefore they said.—" We will not ratify this lease. We will leave it exactly where it is now, and then should this bill become a law the Boston & Lowell will stand exactly like all other roads. No discrimination against a foreign corporation, no discrimination in favor of a foreign corporation, but one law for all."

That is the plain, the logical, the reasonable interpretation, as it seems to me, of that report, so far as it throws any light upon this question. Now, these words, " It would be unjust to exercise a discrimination in favor of a Massachusetts corporation by conferring upon it rights and immunities which are not accorded to *other* roads under the provisions of the general law,"—these words have no meaning at all unless this same Massachusetts corporation is one of the roads that are included under that general law.

Now, it is said that the Boston & Lowell road opposed this bill. That is very true; that is admitted. But they did not oppose it because it did not allow them to come in. Search the speeches of the counsel for the Lowell road that were made here before the railroad committee in 1883, and you will search them in vain for a single statement that they opposed it on the ground that the Lowell road was not included. I will tell you why they opposed it. They opposed it, in the first place, because, from the action taken by the Concord road and the Montreal road and the Northern road in May previous, they had good reason to believe that that matter had all been arranged, and that when the law was passed, although they could come in there would be *nothing for them to get after they got here.* That was the reason they opposed it, because they thought the thing had been so preconcerted and prearranged that if they did come in it would do them no good. And, moreover, they opposed that general law for this reason: Because it provided that no railroad could be built in the first instance without asking the permission of the supreme court and the railroad commissioners, and they said that is no general railroad law, so far as the building is concerned. Make your general railroad law,

so far as it relates to building, just as such laws are in other states. They will permit anybody to build a road when he pays a certain amount into the state treasury as a guaranty of capital, and when he has laid out the route and filed his plans in the proper office. That is why they were opposing it, because it did not go far enough as a general law with respect to building; and the Lowell opposed it, as I have said, because they thought that the thing had been so fixed that they would have no opportunity of getting anything after they got in. This law was opposed by the *People and Patriot* at that time.

You know there had been rather a warm time at the meeting of that road in May when they passed formal resolutions favoring consolidation, and you will remember that Mr. Pearson stated in his paper the next day that that vote by which they proposed to consolidate was not a fair vote; that it was carried through in a high-handed way by Mr. Vose and by others; and he said in his paper that if this matter had been fairly presented to the stockholders of the Concord road, they would have voted it down by a majority of three to one. That is what *The People and Patriot*, edited by Mr. Pearson, stated at that time was the real feeling of the stockholders of the Concord road, with respect to consolidating. He says, "J. Thomas Vose, who is the acting president of the Concord Railroad Corporation, not a share standing on the corporation books in his name, made a pitiable exhibition of himself at the annual meeting on Tuesday. His conduct at said meeting cannot add to his credit. There was but one feeling among the stockholders with respect to his unparliamentary course, and there can be but one feeling among the public generally. His excluding the votes of the minority of the stockholders, a right guaranteed by the laws of the state, and which, could it have been taken, would have shown a majority of more than three to one against consolidation, was a bold and naked piece of usurpation, utterly indefensible and without the least excuse." That, it seemed, was the real feeling of the Concord road at the time it passed this resolution in May, 1883. Well, Mr. Pearson was consistent. He says, "That vote was not, after all, an honest and fair vote. I am opposed to it." And he continued to oppose it, and when the Colby bill was under discussion in the house in 1883, Mr. Pearson took occasion to say some

things in regard to it. What was his interpretation of what that law meant? He is standing up here by his counsel and by his agents and saying that that law was a special law; that it simply meant two consolidations and no more. And yet, if you will look at *The People and Patriot* of August 16, 1883, you will find this: "The present legislature is coolly invited to enact into law a measure which contains not only the very objectionable feature of the bill of 1881, but which *especially* authorizes not only the consolidation of the railroads in New Hampshire, but also of *foreign corporations therewith.*" That is the interpretation of this law that was given by Mr. John H. Pearson in 1883 when it was under discussion here. Now, gentlemen, what do you think of the consistency of statements of that sort? What do you think of the honesty of such a construction as is contended for here? Why, it is certainly true that in some cases where a statute is ambiguous you may take the testimony of the surrounding circumstances, but it is new law that the statements and speeches of the lobbies made four years before are to be considered, much less held to be conclusive, in constructing statutes. It is well settled law, that first of all the meaning of a statute is to be discovered by reference to its text, giving to the words their natural, reasonable, and ordinary meaning; and I say, gentlemen, that section 18 of this law, which says "Railroad corporations created by the laws of other states, *operating* roads within this state, shall have the same rights for the purpose of operating, leasing, or uniting with other roads as if created by the laws of this state," is conclusively against such a construction as is placed upon it by Mr. Mitchell, and my brother, Mr. Sulloway. "Corporations created by the laws of other states," Mr. Mitchell says meant the Boston & Maine only. That was before Mr. Mitchell discovered that the Boston & Maine was a domestic corporation. He discovered that after he made his speech. But if it meant the Boston & Maine, why did not the legislature say "foreign corporations, by which is meant the Boston & Maine only, may have the same rights and privileges as roads created by the laws of this state"? What is the other corporation?—the Boston & Maine is only *one*—"*corporations* created by the laws of other states." Suppose the Boston & Maine was one, what are

the others? Gentlemen, there can be but one fair and honest construction of that statute. If you test it and decide it by the ordinary rules of construction, it is that the state of New Hampshire meant to throw open her gates to all foreign corporations, to all railroad corporations that could by any possibility have any interchange of traffic arrangement with the roads of this state. The gentleman from Laconia says "these rules of construction are such as courts adopt," and he intimated to you the other day that they are not safe rules for us to adopt. He says that is well enough for courts;—courts take those rules of construction, but that is not the way for us to come at the meaning of this law. Why, I beg to know, have courts adopted certain rules of construction? Is it not because those rules have been tested by experience, and found to be safe and reasonable rules by which to be governed? Are they not founded in common-sense? I ask my brother; and if so, why are they not the proper ones for us to use, so long as experience has shown them to be the ones which courts may follow, and because they are sound in reason and common-sense, and correspond with the experience and observation of men? Now, gentlemen, the Lowell road came here and leased these two upper roads. My friend from Manchester says they came here without any invitation, and he says, "I challenge anybody to stand up and tell us who invited them." Well, I gladly accept that challenge, as I shall several that the gentleman made. In the first place, I say that the Lowell Railroad was invited here by the Northern road and the Montreal. You remember, gentlemen, that in the meetings of stockholders they passed resolutions that they would unite with the Concord road if they could do it on "equitable terms." What did the Concord propose as equitable terms? They haggled and dickered over it for more than nine months, and then they proposed they would lease the Northern road at four and one half per cent. for ninety-nine years, and if its earnings increased $25,000 per year they would add a quarter more until they got up to five and a half per cent., with the privilege at the end of three years to the Concord road of reducing the rental to five per cent. at its option. That was their equitable proposition! Now, then, the Northern road and the Montreal were unable to make a contract with the Concord that to them seemed

equitable. Who was to decide it, I would like to know, if it was not those roads? They were under no implied contract or implied promise to lease that road to the Concord unless they could do it on equitable terms; and they did not consider that it was equitable for the Concord to say how much they should pay at the end of three years, and so they went to the Lowell road and asked the Lowell road to lease them. This is the fact, Brother Sulloway. It was not any "jumping" or "leaping," as my friend from Laconia expressed it the other day,—jumping over the Concord road,—but it was the Northern and the Montreal going to this Lowell road to get a contract which they could not get out of the Concord. What reason had they for not making a contract with the Concord, if they could do it on fair terms? So there is *one* party that invited them here,—these two roads. The other party that invited them was the state of New Hampshire, when, under the 18th section of that act of 1883, it gave to "any corporation created by the laws of other states" simply "*operating*" roads within this state, the right to avail themselves of that act. It did not say *legally* operating them, but, so far as a standing in this state was concerned, simply operating them. I say, when they did that they extended an invitation to the Lowell road to come here and avail itself of the act of 1883.

The gentleman from Nashua, in his speech, characterized the conduct of the Northern road as "subterfuge and duplicity," because, after the decision in the Dow case they did not make a lease to the Concord road. Gentlemen, who was guilty of subterfuge or duplicity? I say it was the Concord road, and that road only. What was the memorandum of agreement which they entered into? It was an agreement entered into in June, 1885. "If the existing lease of the Northern Railroad and branches to the Boston & Lowell Railroad Corporation is not approved by the legislature of New Hampshire at its present session, or is declared invalid by the supreme court of New Hampshire in a suit now pending for that purpose, or is terminated in any other manner in the meantime, we will use our active influence and efforts for the execution of a similar lease or leases of the Northern Railroad and branches to the Concord Railroad Corporation for a like term, at the same rent and on the same terms and con-

ditions, the form to be satisfactory to J. Minot and Mr. Benton, but to be substantially like that of the existing lease, and the money, result, and obligations assumed by the parties to be the same as under the existing lease." That was the memorandum of agreement, and it is said that because the Northern road did not make a lease under that agreement it was guilty of "subterfuge and duplicity." Now, I say that the only "subterfuge and duplicity" in the matter was shown by the Concord road. Immediately after the handing down of the decision in the Dow case, Mr. A. L. Sulloway, representing the Northern road, undertook negotiations with the Concord road, seeking for the carrying out of that memorandum agreement of June, 1885, as you will see by the letter of Judge Minot on page 31 of the testimony. What did the Concord road do after they had received these suggestions from Mr. Sulloway? Did they come right up to the scratch and take that lease like men? Not at all. Read the subsequent three letters of Judge Minot, and see how he commences to back and fill, to evade, and raise up objections, and to talk about what the Lawrence would want and what the Montreal would want, and that there would have to be some more new legislation. Its plain, simple interpretation was this: "We have got you, gentlemen, now, where we can dictate terms, and we will hold you there until we can make our terms." Their last proposition was this: That they would take that lease on the same terms that were mentioned in the agreement, provided the Northern road would sell out its Concord stock to friends of the Concord. Was that as they agreed? Was there any condition of that sort in that memorandum of 1885? Were the terms of that memorandum of 1885 that they would take a lease provided the Northern road would sell out its stock to them? Not at all. They injected that as a condition at the last moment, and they would not take a lease under any circumstances unless the Northern road would sell out its stock. Now, when the directors of the Northern road saw that the Concord was playing with them, was "sinching" them, they would have been false to their trust if they did not close with another company that made a fair and certain and positive and definite offer. When, three days afterwards, the Concord road learned that the Lowell was likely to get the lease, all the difficulties

that Judge Minot had conjured up suddenly vanished. No new legislation needed. All the trouble about the Montreal went out of sight. All the difficulties which he had talked about in his three several letters suddenly disappeared. Then they passed a resolution that they take a lease at six per cent. Who was guilty of "subterfuge and duplicity"? I have not any doubt what any honest man will say about that. [Applause.] The gentleman from Manchester, Mr. Sulloway, says,—"Are you going to lease this Northern at five per cent. for ten years and six per cent. for eighty-nine, when the Concord would give you six per cent. from the beginning? Why, you are taking three hundred thousand dollars from the stockholders of the Northern road, $30,000 a year." Well, my friend, if the stockholders of the Northern road are satisfied with that arrangement, do you think it is very becoming for you and me to fret over it? Besides, I would like to know if that three hundred thousand dollars that would be paid to the stockholders is not coming right out of the people eventually in the way of freights and fares?

But the gentleman from Laconia, Mr. Stone, says the Lowell did not take the Northern and the Montreal road in good faith. I have already alluded to this argument, by which he attempted to construe this statute by taking the resolutions of these roads at their annual meetings and ignoring all the rules of construction that are adopted by the courts.

I want to call your attention to the next point he made, which was that the Lowell did not take these roads in good faith. And how does he prove it? Why, by reading the protest that was entered at the stockholders' meeting, called to ratify that lease, the protest that was entered by Mr. Dow and several other stockholders, representing about 125 shares in all. Because Mr. Dow *protested* against that lease, it is argued that the Lowell did not take the lease in good faith. That is the proposition. Can the gentleman from Laconia put it upon any other ground than that? How in the world so good a lawyer as my friend Mr. Stone can stand up here and argue in any such fashion as that passes my comprehension. What is the test of the Lowell's good faith? The test of the Lowell's good faith was this: Did they believe, or were they warranted in believing, that *the state meant to include them within the scope of*

that law? The state's *intention*, not Mr. Dow's *wish*, was the thing to be considered. It is true that if a man should buy a cow or a farm, knowing that the title was not in the seller, or had reasonable grounds to believe that he had no good title, he would take it at his peril, and he would not be a purchaser in good faith. But if his title was to all appearances good, and he took it, then he is a *bona fide* purchaser, although the title may prove bad. Gentlemen, suppose one of you should buy my farm, and when you came to take the deed somebody standing around should say,—"That deed is defective; ought to be a seal, or some clause has been left out—you better not take that:" you would say,—"Why, I bought that farm in good faith, because I understood that he meant to sell it to me. Because of a *mistake in the deed*, it does not follow that I did not buy in good faith." And because there was a mistake in the *deed* which the state of New Hampshire gave to the Lowell road, shall we stand up here and say they did not take the lease in good faith? There was a defect in that law. It was the mistake of the state. It was no fault of the Lowell road: and because the state made a mistake in its deed, shall we say the Lowell did not act in good faith? Why should they suspect there was any defect there? The law had just been passed, after an exhaustive and able discussion by some of the most accomplished and able counsel in the state; and especially why should they suspect any defect of that sort, when the decision of the supreme court of the state of New Hampshire that there is such a defect stands solitary and alone in the records of judicial determination? Everybody admits there is a defect in that law, under the ruling of the court. The Hazen bill proposes to cure that defect, and to put the Lowell road exactly where it would be had not that defect occurred. In that way it is proposed to carry out exactly the provisions of that law of 1883, and this legislation is in harmony with that law. The Atherton bill proposes to cure that defect, but at the same time to let the Concord road in and secure the opportunity which it neglected, which it let go by, and which, according to the statement of Mr. Pearson, was not wanted by more than three fourths of the stockholders of the Concord road. That was the "unexpected operation" of the

law. They expected to consolidate when the law was passed, but when they could not get equitable terms out of the Concord, then there was nothing left for the Northern but to make such terms as it could with other roads. Now, gentlemen, let me put to you a plain question. Suppose it had been the Concord road that had taken a lease of the Northern, and the lease had been set aside, just as it has been ;—for, mind you, the decision of the court is that *nobody* could take a lease — not that the Lowell could not, but that nobody could take a lease ;— suppose that lease had been set aside: would Mr. Stone come here and say the Concord did not take that lease in good faith, because somebody objected to it? Would you say, because some one stockholder objected to that lease to the Concord, that the Concord did not take it in good faith? Now, if, under these circumstances, the Concord road were here seeking to have this legislature, acting as a court of equity, cure the defect in the law, and that road restored to the position it would have been in had there not been such a defect; and suppose, then, that the Boston & Maine, or the Boston & Lowell, should come in with such a bill as the Atherton bill, authorizing one of them only to take the lease: would not the Concord be found loudly and strenuously protesting against such a proposition, and indignantly and clamorously denouncing it, and appealing to us not to permit it, but to make good their title which they had honestly taken, and would not their protest and appeal be heard and heeded? Then I ask, On what principle of honor, honesty, or fair dealing should we reject the claims of the Lowell road now, when they stand precisely in that situation? And is it not most unbecoming and dishonorable for the Concord to attempt to defeat the wishes of the vast majority of the Northern stockholders, and to disrupt business arrangements which the Lowell has made in that behalf, and, above all, to ask the state to repudiate the obligation it is under to make good the contract it entered into with the Lowell road when it authorized it and any other "corporation created by the laws of another state" to avail itself of the provisions of the act of 1883? I do not believe that the state of New Hampshire is going to enter on any such despicable and dishonorable course of action just now.

[At this point the house adjourned, and reässembled at 2 P. M., when Mr. Branch resumed his argument.]

MR. SPEAKER:—I was speaking this morning, before the adjournment, in regard to the argument of good faith, and especially called your attention to the point which the gentleman from Laconia, Mr. Stone, made when he said that the Boston & Lowell did not take the lease of the Northern in good faith because Mr. Dow and others objected. I was arguing that the objection of a stockholder is not the test of good faith, and as bearing upon that point I would like to have some one tell me, if that is so, if the objection of a stockholder to a lease makes the lease *mala fide*, not in good faith, if all the provisions in the Atherton bill which provide as to what shall be done in case a stockholder objects, are not mere nonsense? Are they going to get a lease in good faith under the Atherton bill if some one objects?

It is said further, conceding that the Boston & Lowell took the lease of the Northern and the Boston, Concord & Montreal in good faith, they are not in any position to complain now, because they say, and the minority report it, that they have violated their agreement with the Boston, Concord & Montreal by making an assignment of that lease to the Boston & Maine. The minority report states that in terms,—that the Boston & Lowell has leased the Boston, Concord & Montreal to the Boston & Maine, and they have repeated it and reiterated it. Gentlemen, where is the evidence of that fact? The gentleman from Nashua says, very discreetly, in his speech upon this motion, that the "chain of evidence remains to be completed." Well, I should say the chain of evidence did remain to be completed—not simply the chain, but the first link. If there is any evidence that the Boston & Maine has leased the Boston & Lowell, why did n't the minority append that evidence to their report? There is no such fact. It is a sheer fabrication, a most astonishing falsification. That the Boston & Lowell has leased itself to the Boston & Maine does not carry with it a lease of the Boston, Concord & Montreal. Suppose I should lease my farm to my friend Mr. Stone, with an agreement that he should not transfer that lease to any one without my consent, that he should not sublet it, that is, let a part of it without my consent: that is

precisely the terms of the lease of the Boston, Concord & Montreal to the Boston & Lowell—that they will not transfer the lease to a third party without the consent of the Boston, Concord & Montreal. Now, suppose next year Mr. Stone, who has a farm, should let his farm to my friend Mr. Morrill—let his own farm to my friend Mr. Morrill: would anybody say, because Mr. Stone had leased his farm to Mr. Morrill, that he had also leased my farm? And what should you think, gentlemen, of a man asserting such a proposition as that? And what would you think if I should get up and say, Mr. Stone is nothing but a "beautiful corpse," he is nothing but a "pauper corpse," is nothing but a "shadow of his former self." That is precisely the situation in regard to this Boston, Concord & Montreal Railroad. Mr. Mellen testified distinctly that the agreement was that they should not transfer the Boston, Concord & Montreal to the Boston & Maine unless the directors of the Boston, Concord & Montreal consented to it. Who is running the Boston, Concord & Montreal to-day, pray tell me? The minority complain because they issued an order,—"a military order," as they call it,—instructing every employé to stand by his duty, and not to surrender a single thing. Does that look as though they were out of possession of it? And yet the minority complain that they have violated their lease and their agreement because they have abandoned possession of it, and in the next breath they tell us they have issued a military order holding it. Now Mr. Mellen testified distinctly that the agreement was not to lease the Boston, Concord & Montreal Railroad without the consent of its directors. Are those directors going to transfer this lease to the Boston & Maine—these men who are also directors in the Concord road and members of the "old veterans'" relief syndicate—these men that have been standing up here for three months, frantically and hysterically imploring this legislature to keep back that howling monster, the Boston & Maine, from this peaceful valley,—are they going to surrender the Boston, Concord & Montreal to it, and betray their trust as the special and heaven-appointed guardians of the welfare of this state? The Boston & Maine cannot get possession of it unless they consent. And are they going to consent? I wish somebody would find out whether these directors of the Boston,

Concord & Montreal are going to deliver their road over to the Boston & Maine.

Now, gentlemen, as bearing upon this syndicate transaction, I want to call your attention to the statement of Judge Bingham in regard to that matter. And, gentlemen, I claim right here that the leading purpose back of this Atherton bill is what is contained in that syndicate: because it is absolutely inconceivable that the Concord Railroad would ever have displayed any such spirit and activity as have been displayed in this contest. Well, what did Mr. Kimball say in regard to that syndicate purchase? He said they bought that stock, these twenty men, to control it in the interest of the Concord road, and that they expected to get nothing more out of it than the Boston & Lowell were paying as rental, which was three hundred thousand dollars a year. Now, if that is so, that they expected to get no more out of it than the Boston & Lowell were paying, three hundred thousand dollars a year, and Judge Bingham says it is, can any one tell how the "old heroes and veterans" are going to be benefited in the slightest by that purchase so long as it did not change the rental the Boston & Lowell was paying? and how is the Atherton bill going to help them so long as none of the "old veterans and heroes," according to Mr. Kimball, would get a dividend on that stock "within the lifetime of any of the members of that syndicate," that contains so robust a young man as Charles A. Busiel? Now, what did Judge Bingham say? He says,—

"The facts about this business are, that twenty gentlemen bought out the stock which was originally owned by Mr. Lyon and Mr. Bell and Mr. Harlow,—twenty of them bought the stock which was formerly owned by three or four, and they paid its market value for it; and they paid for it, not with the idea of making any speculation,—there was not a man in that whole crowd, to my knowledge, who had any idea of speculation,—but the idea was that they bought it at a price where it was safe to buy it, calculating, upon a lease already made of the Boston, Concord & Montreal road, that it was worth, if that lease was permitted to remain, just about what was paid for it, as near as they could calculate. No man would ever have bought it simply for the purpose of holding, that is, none of these men would,

but they bought it on account of seeing in the Massachusetts legislature a bill, which was afterwards passed and which became a law, and which was then pending in the Massachusetts legislature when they bought the stock. * * *

"Well, then, they saw this act pending in the Massachusetts legislature, which afterward became a law. And they determined that they would buy this stock; and they did. Well, now, gentlemen, we thought we would fix that in the Atherton bill so that no mortal man, whatever his disposition was, would have the audacity to claim that the Atherton bill made any better provision for the old stock and new stock than existed under the old state of things. And I submit that nobody for a single moment who will look at that bill can entertain the idea that it will be as well for the old stock and the new stock as it will to let the road remain under the lease to the Boston & Lowell. * *

"Well, now, to put an end to all that sort of talk, I suggest here that so far as the syndicate is concerned, so far as the Boston, Concord & Montreal is concerned, you may strike out the latter part of section 12 and substitute this: That from the present time until the time this lease would expire, which would be 1983, no money shall be paid in discharge of, or upon, the indebtedness of the Boston, Concord & Montreal road, or upon its stock, except a sum corresponding to the rental provided in that lease, which is $300,000. That will leave the Boston, Concord & Montreal road with nothing to be expended upon it as it exists now, except what it is entitled to under the existing lease; and all the money that is earned to go to the lessor, and the syndicate to get no dividends beyond what they would get if it should remain under the lease that was intended to be taken."

That is the deliberate, studied, authoritative statement of one of the syndicate and the senior counsel of the Concord road: the statement of a man who is a master of the art of stating a thing so guardedly and craftily as to make the statement almost invulnerable. Well, as Jack Bunsby would say, "the bearings" of this statement of Judge Bingham's "lays in the application on it." In the first place, you remember Judge Bingham spent a great deal of time in showing up what he claimed was the very unsound financial condition of the Lowell

road, its accumulated debt, contrasting its methods of doing business with those of the Concord that went on "the plan of pay as you go," and condemning its habit of buying up what he called "worthless roads," and issuing stock and bonds in payment; and yet no sooner did Judge Bingham and his friends learn that a bill had been introduced in the Massachusetts legislature confirming the lease which the Lowell had taken of the Boston, Concord & Montreal, than they had so much confidence in the Lowell management and solvency that they went right off and bought a controlling interest in that Montreal stock. "Not as a speculation"—perish the thought!—but because "it was safe to buy it, calculating, upon the lease already made, that it was worth, if the lease was permitted to remain, just about what was paid for it." That was in May, 1886. What a refutation is there in this single statement of Judge Bingham's of all his labored argument, in which he endeavored to demonstrate how unsafe the Lowell road is in respect to its finances and management. Why, they jumped for that stock the moment they saw the bill had been introduced, and were willing to pay $15 a share for the old stock that was only worth $7 in the market. And none of that, according to Mr. Kimball, will yield a dividend to the "old heroes" within the lives of any of the syndicate. Further than this, and more important by far, is the light this statement throws upon the claim which has been made here and insisted upon, and pressed, that the Lowell road had no legal right to lease that road under the act of 1883!—when Judge Bingham and Judge Minot, and their associates, were making haste to buy that stock in the Montreal upon the supposition and with the prospect that the Lowell lease would be upheld! But Judge Bingham says that it would be better for the holders of the old and new stock under the Lowell lease than under the provisions of the Atherton bill. If so, what becomes of his solicitude for the old "heroes and veterans" whom he is trying to deprive of the advantage of the Lowell lease, and give them the lesser benefits of the Atherton bill? And how does he reconcile his position in respect to issuing bonds by the Lowell in payment for property acquired, with the provisions of the Atherton bill, by which the Concord Railroad is to be seduced from its virtuous career of "pay as you go," and to issue bonds

in payment of and to carry out the magnificent projects it professes to have in contemplation for the benefit of the upper part of the state? Now I observe that the minority have followed the suggestion of Judge Bingham, and have stricken out of the Atherton bill the part which Judge Bingham proposed should be stricken out. And you will notice that it is the *first amendment*, which they were forced to make early in the session, and which they seemed to think would give an appearance of great fairness and respectability to the purposes of the syndicate. And they have substituted this new one in place of the first one, which they have had to abandon. This last one provides for dividends upon the old and common stock, not exceeding 4 per cent., and the minority say these dividends would begin in a very few years. The amendment, like the first one, which it supplants, is a confession as well as a change. It is a confession that in the bill as it was introduced the scheme of the syndicate had been entirely *concealed;* but by the first amendment they endeavored, since they were compelled to bring it into publicity, to dress it up as attractively as its uncomely figure would permit, but having failed in that, their latest amendment comes as a reluctant and tardy confession that they started out to get something that they wished and hoped would not be discovered; and now, after their imposition has been thoroughly exposed, they are willing to take a little, if you will only please be so kind as to let them have that!

But why this terrible distress about the stockholders of the Montreal road? They were satisfied to lease their road to the Lowell. Not one of them protested; and under the amendment to the Colby act contained in the Hazen bill, if that old and common stock is, or might be prospectively, worth something, they can get its full value if they are not content. And so long as they are satisfied with the Lowell lease, and the public is delighted, why should any one want to change the arrangement by having the Concord pay $300,000 a year, instead of letting the Lowell do it, as it agreed? But the gentleman from Manchester offered several challenges here the other day; and among other things he challenged anybody to show how the old and common stock in the Boston, Concord & Montreal road is going to be benefited at all by the Atherton bill. Well, I am not

afraid of that challenge. If he wants to know, or anybody else, he can find out by looking at the Atherton bill, section 11. That was the one they amended first, and they abandoned their amendment. They struck out that amendment and substituted this: "And it is further provided, that whatever interest may be saved by the funding and refunding of the indebtedness of the said Boston, Concord & Montreal Railroad should be first used in paying a dividend, not exceeding 4 per cent., on the new stock and the old stock, so called, of said Boston, Concord & Montreal Railroad." There is where they get it. And the minority report says, on page 6,—

"The adoption of the Hazen bill, therefore, would emasculate the resources of the Boston, Concord & Montreal Railroad above 5 per cent. on the preferred stock of $800,000, while the *remainder* of the capital stock, amounting to $1,000,000, would be left to uncertain recovery for years to come. On the other hand, *the Atherton bill insures an early dividend on this stock.*"

Mr. Sulloway challenges us to tell where there is anything in the Atherton bill that will give these gentlemen any dividend on that old and common stock. There it stands, in section two, and its meaning is set forth in the minority report. And they say they will get those dividends within a very short time.

But the mask has been thrown off. The avowal has been made. The real purpose of the Atherton bill has been confessed. The gentleman from Laconia, Mr. Stone, speaking for the Concord road, tells us in plain English that which we had all along charged and they persistently denied, that the chief thing sought to be accomplished by that bill is to take the present and future surplus of the Concord road, which is the property of the state under a solemn contract, and apply it to the enrichment of the Montreal, and to the carrying out of the most insolent and criminal piece of stock-jobbery ever planned or purposed.

Mr. Stone—That last part I did not say.

Mr. Branch—It is to be a marriage! The rich, aristocratic Concord is to wed the impecunious and lowly Montreal! The love-making commenced in May, 1886, by Judge Bingham and his friends when they bought that Montreal stock. The engagement is announced: we are invited to the festivities. "The funeral baked meats" of the Lowell are to "set forth the wed-

ding dinner" of the Concord. Well, gentlemen, the prosperous bridegroom, the Concord, is not going to wed the Montreal for her money, and yet it is a marriage for money; for the riches of the state, which the Concord holds in trust for the state, are to be embezzled for the dowry of the empty-handed bride, and her husband will then acquire their ownership by rule of common law. I have heard of a guardian's marrying his ward to get her property; but I never before heard of a guardian's bestowing it upon his sweetheart, and then marrying her to get possession of it. [Applause.] But dropping for the present the romantic figure which Mr. Stone has chosen to illustrate the confessed purpose of this syndicate, let us look at it for a moment in a somewhat matter-of-fact way; and I ask you, What earthly advantage could the absorption of the Montreal by the Concord be to the Concord stockholders? They get their 10 per cent. now, and they could get no more afterwards. Is it not as plain as day that the only advantage is to the other road and to the twenty men who control it? The plain question is, Shall we turn the surplus wealth of the Concord that belongs to the state into the improvement of any railroad and the pockets of some speculators? Suppose we did that, and one of your constituents should ask why you did it, you would have to say, "Oh! so the surplus of the Concord could be used to make a good road of the Montreal." "But that surplus belonged to the state," says your neighbor; "why did you take the state's money for that?" "Yes," you say; "but the Montreal was poor, and needed it." "But," says your neighbor, "I am poor, too. My taxes are high;—why was not that money used to pay the state's debt? Did not the Lowell propose to make a good road of the Montreal, and was it not doing it?" "Yes," you say; "but then the syndicate did not want the Lowell to have it. The syndicate said they wanted "the plum in the Concord road," and we thought we would let them have it." That is the proposition, to take the money of the state to help a single road and to enrich twenty speculators, when we might have the Montreal road put in proper shape without aid from the state, and have this surplus in the treasury of the state besides. Gentlemen, instead of asking us to sanction and permit any such monstrous, incestuous marriage as that to which the gentleman has invited us,

he should rather call upon us, as guardians of the rights and property of the commonwealth, and in her name, to rise in our places and say, "Gentlemen of the syndicate, we forbid the banns!" He may call it a "marriage:" I call it a swindle and a steal! [Applause.]

There is another point upon which I desire to say a few words. It is said that a lease of 99 years is too long; that a lease for that time is a practical sale. Granted: but some company has got to own the railroads at the end of 99 years and during that period, and what possible difference can it be who the company is, if the roads are run satisfactorily to the public and to the stockholders? The real ownership of every road in the country will change every year, because the stockholders will change, and nothing we can do will prevent it. Now, the fact that the improvements upon these upper roads necessary to be made will require large outlay, and that they will extend over some years, demands that there be a permanency about a lease that will warrant investments of so permanent a character. So far as the stockholders are concerned, it makes their investment much more desirable than when it rests upon a short lease. The stocks and bonds of railroads under long leases are the very best securities for savings institutions, trustees, for men and women to lay by for old age or for their children. These are some of the reasons in favor of a long lease.

Leases for 99 years are the rule. Even the Concord was willing to lease the Portsmouth for 99 years; and the objection now raised is, in my judgment, absolutely insincere. When the Atherton bill was introduced, it provided for a lease of the Northern for 99 years. It has been amended, providing for a thirty-year lease, and now the supporters of the Atherton bill are lugubriously saying, "Oh! a lease for 99 years is too long—too long;"—but has any one of them undertaken to give any firm and valid reason why? Is this talk anything more than a cheap and shifty diversion? The gentleman from Laconia, Mr. Stone, says a lease for 99 years is too long; but the only reason he pretended to give why it is too long was, that before such a lease would expire we and our children, and some of our grandchildren, would be dead! But the marriage of the Concord to the Montreal, which I suppose will last until death do them part,

seems to Mr. Stone a most alluring and charming arrangement. The bliss of the union doubtless serves to make the time seem short. The idea of a ninety-nine-year lease sends a pang of distress to the bosom of the gentleman from Manchester, Mr. Sulloway, and he proceeds to denounce it in bursts of extravagant and flamboyant rhetoric. But is not this revulsion from the policy of a ninety-nine-year lease a little sudden and abrupt? I should like to know if they are really honest about it, and oppose it on principle, or whether they have taken it up just now as a convenient dodge, a handy deception, for this special emergency. If it is a dodge, a deception, it requires no answer: exposure of it is enough;—but if they oppose a ninety-nine-year lease on principle, their opposition is entitled to consideration. Are they opposing it on principle? If they are, I ask them how long since they adopted that principle? It is only a few days since that this legislature passed a bill increasing the capital of the Cheshire road $1,000,000, and providing it might lease other roads, or be leased by other roads, within or *without* the state, for a period of 99 years. That bill was reported unanimously by the railroad committee, and was passed without debate or roll-call. Where were these gentlemen then who oppose a ninety-nine-year lease now?

Why did not the gentleman from Laconia rise up, and in measured, impressive tones say,—"Gentlemen, your hair will have silvered over and you will have gone to your graves, your children will have grown to maturity and gone to their long homes, and perhaps your grandchildren will have gone to their long homes, before this lease terminates?"

Why did not the gentleman from Manchester rush to the floor, roused and incensed, and vehemently and dramatically denounce the bill as the scheme "of stock-jobbers, stock-waterers, and railroad wreckers" to destroy our liberties and the liberties of our children and our children's children, and say that the consequences of such a bill could only be changed "by the tramp of armed men"? [Applause.] Where was their principle then? Where is their consistency now? Does any one need any other evidence than this to prove that this new battle-shout of the Concord road, like that about "surrendering our liberty" and "railroad wreckers" and "invaders," is

nothing but windy declamation and sanctimonious cant? [Applause.]

The gentleman from Manchester and the gentleman from Laconia stood here and argued to you the other day, as a proposition of law, that if we passed the Hazen bill we have so legislated the railroad question out of the state's control that we cannot touch it for ninety-nine years. And the gentleman from Manchester says that if anybody disputes that proposition he will bury him under an avalanche of authorities so deep that the trump of Gabriel will not reach him. Gentlemen, I am not so old a lawyer as the gentleman from Manchester, but I do not shrink at all from that avalanche. So far from his having any avalanche, I say he has not got a flake of authority that will back up any such proposition as that.

It is argued that we cannot do it because it would impair the obligation of a contract. The gentleman from Laconia says, that under the provisions of the constitution of the United States, any attempt after we pass this law would be to impair the obligations of a contract. Well, it is no doubt true that the constitution of the United States will not allow any state legislature to impair the obligation of a contract, and it is undoubtedly true that when a legislature passes a law of any kind and anybody acts under it, there is a contract between the state and the person who acquires the benefits of that contract.

When the famous Dartmouth College case was decided, it was intimated there by Judge Story that if states wanted to preserve their right to repeal any statute which was passed, they must include within the statute a repealing clause: they must say that that act was subject to be amended, altered, or repealed at any time by the legislature. And accordingly, in 1831, the state of Massachusetts passed a law which provided, whenever a corporation was formed, that any law forming the corporation was subject to be amended, altered, or repealed at any time, so that in case they should pass a law and should neglect to put in that repealing clause, they would be perfectly safe under this general clause. And the state of New Hampshire did the same thing. You will find the law on page 353 of the general laws.

"The legislature may at any time alter, amend, or repeal the

charter or annul the powers of any corporation, whenever the public good shall require the same."

Accordingly we find that in every statute that is passed it is provided that the legislature may at any time amend, alter, or repeal it; and the supreme court of the United States says that *that provision is a part of the contract*, and anybody that undertakes to avail himself of that contract must take the whole of it. So if, under the Hazen bill, or any general railroad law, or under the Atherton bill, anything should be done, and at any time the legislature should think best to amend it, they can amend it under the saving clause of our statute, and under the saving clause in the general railroad law, or in the Hazen bill, or in the Atherton bill.

Now this matter has been decided by the supreme court of the United States over and over again. And the first case I want to call your attention to is reported in 105 U. S. 13, a case that went to the supreme court of the United States from the district of Massachusetts. It was decided by Mr. Justice Miller, and in his opinion he says,—

"It was no doubt with a view to suggest a method by which the state legislatures could retain in a large measure this important power, without violating the provision of the federal constitution, that Mr. Justice Story, in his concurring opinion in the Dartmouth College case, suggested that when the legislature was enacting a charter for a corporation, a provision in the statute reserving to the legislature the right to amend or repeal it must be held to be a part of the contract itself, and the subsequent exercise of the right would be in accordance with the contract, and could not, therefore, impair its obligation. And he cites with approval the observation we have already quoted from the case of *Wales* v. *Stetson*, 2 Mass. 143. * * *

"The history of the reservation clause in acts of corporation supports our proposition that whatever right, franchise, or power in the corporation depends for its existence upon the granting clauses of the charter is lost by its repeal. * * *

"It was therefore in the power of the Massachusetts legislature to grant to another corporation, as it did, the authority to operate a street railroad through the same streets and over the same ground previously occupied by the Marginal company. * *

"To this there can be no valid objection. The property of corporations, even including their franchises, when that is necessary, may be taken for public use under the power of eminent domain, on making due compensation."

And in another case, in 96 U. S. 499, which was *Railroad Company* v. *State of Maine*, two railroad companies by their charter were protected against taxation beyond a certain amount. By a subsequent act of the legislature they were allowed to consolidate into one company; and after they consolidated into this one company, the legislature undertook to pass a law which would tax them more than they were taxed before they consolidated. And they said, you cannot impair the obligation of our contract. It was agreed in our original charter that we should not be taxed beyond one half of one per cent. But the supreme court of the United States said that when these two companies consolidated they consolidated under that general law which permitted them, and then they came within the purview and scope of that new law; and so long as the new law did not contain any clause which limited the amount of their taxes, the legislature had a perfect right to tax them as much as they pleased. The court says,—

"The act of the legislature of Maine of 1856, authorizing two or more corporations to consolidate and form a new corporation, was an act of corporation of the new company; and the latter, upon its formation, became at once subject to the provision of the general law of 1831 (which is the same as our law), which declared that any act of incorporation subsequently passed should at all times thereafter be liable to be amended, altered, or repealed, at the pleasure of the legislature, in the same manner as if an express provision to that effect were therein contained, unless there shall have been inserted in such act of incorporation an express limitation or provision to the contrary."

Now, gentlemen, these are the decisions of the supreme court of the United States, which are to this effect, that where we have a general saving clause, as I have read to you, or where we have a special enactment in any law under which corporate rights are granted, that becomes a part of the contract, and the state may at any time amend, alter, or repeal it as it pleases.

But even supposing the state of New Hampshire should grant

away its right to amend, alter, or repeal a law of that description, I say they have still a remedy which goes further than any repealing clause of a statute. We have heard oftentimes of the expressions "eminent domain," "the right of eminent domain." What do we mean by that? We mean that every man holds his property of every kind subject to the right of the state to take it whenever the state thinks fit or proper, and devote it to a public use. All property, it makes no difference what it is, railroads or anything else, is subject to be taken by the state under the right of eminent domain. When they lay out a railroad through the exercise of that power, they go right on to a man's land, survey the route, and if he objects to the amount they propose to give him, he appeals to the court, and his damages are assessed. A man's property can be taken for any public purpose. If you wanted to lay out a new railroad, you could take the property of a railroad company the same as of an individual. It is within the power of the state, in its exercise of the right of eminent domain, to take every single railroad in the state of New Hampshire and form a new company. You cannot divest the state of that right. It is something which inheres in the sovereignty of the state. No legislature can barter it away. Does anybody deny that proposition? I am not going to bury him under an avalanche if he does; but I would like to read for his instruction a few fragments from Cooley's Constitutional Limitations, and see how it jibes with the preposterous law that has been asserted here upon this floor. I read from page 536: "Every species of property"—and I take it that includes railroads—"which may become necessary for the public use, and which the government cannot appropriate under any other recognized right, is subject to be seized and appropriated under the right of eminent domain. Lands for the public ways; timber, stone, and gravel to make and improve the public ways; a building that stands in the way of a contemplated improvement, or which for any other reason it is necessary to take, remove, or destroy for the public good; streams of water, corporate franchises, and generally, it may be said, legal and equitable rights of every description, are liable to be appropriated."

We have got within the sovereignty of the state a power that no legislature can barter away, because no legislature can barter

away the sovereignty of the state. That is the right of eminent domain.

Now, the supreme court of the state of New Hampshire had something to say on that. You will find it in *Backus* v. *Lebanon*, 11 N. H. 19, and I will ask the clerk to read the syllabus.

The clerk read as follows:

"A charter granting to certain individuals the right to organize and form a corporation, with power to construct a turnpike road, take tolls, etc., is a contract, within the protection of the clause in the constitution of the United States prohibiting the several states from passing laws impairing the obligation of contracts.

"But this does not exempt the property of the corporation, including the franchise, from the power of eminent domain, or from contributing like other property to the public burdens.

"It does not impair the obligation of the contract to take the property for public use, even if the powers of the corporation are thereby suspended, or the corporation itself in fact dissolved.

"The construction of a turnpike road, by a corporation chartered for that purpose, does not preclude the exercise of the power of eminent domain, in providing for a free public highway over the same ground.

"Nor will a provision in the charter of the turnpike corporation, by which the state reserves the right to purchase the property, after a certain period, at a certain price, prevent the legislature taking the property for a public highway in the ordinary mode.

"It is not necessary, in the exercise of the power of eminent domain, that there should be a special act of the legislature in each particular case. It may be exercised through the action of general laws, and of judicial tribunals."

Thus you see, gentlemen, that the supreme court of the United States, the supreme court of the state of New Hampshire, and this eminent law writer, Judge Cooley, with all the citations there found, say that there is no doubt whatever that the state at any time may take any railroad franchise, or any railroad company or property of any sort, and turn it over to any new company, if in their judgment they think the public needs de-

mand it; and nobody can question the judgment or right of the legislature to do it.

Now, I always like to prove a thing out of the mouths of my enemies, if I can. And I think I can prove that all of this stuff which they have been getting off here in regard to the state being precluded and estopped for ninety-nine years is a pretence and a sham. They say, "Gentlemen, this is a very solemn and momentous occasion. We are going to do something here which cannot be changed for ninety-nine years." If you will look at section 8 of the Atherton bill you will find that they propose right there to exercise the right of eminent domain:

"SEC. 8. If the Boston, Concord & Montreal shall be united with any other road or roads under the provision of section 1, and at the time of such union any person or corporation shall have, or claim to have, a lease of the Boston, Concord & Montreal Railroad, the corporation formed under section 1 may nevertheless take full possession of, hold, and use said Boston, Concord & Montreal Railroad, upon making compensation as hereinafter provided."

Right here in the Atherton bill they are proposing to exercise this extraordinary right of eminent domain, and take the Boston, Concord & Montreal out of the hands of the Boston & Lowell and turn it over to the newly formed corporation. What do you think of lawyers standing up here and telling us that the passage of one of these acts prevents the state from ever doing anything, while right in that very bill they are proposing to resort to the extraordinary remedy of which nobody can divest the state or prevent the state from exercising.

While I am on this point I want to call your attention to another legal proposition. The gentleman from Nashua, in his first speech, gave it as his legal opinion that this Hazen bill is unconstitutional; and he, with others, has argued in that way because it is an attempt, as he says, to make valid an invalid contract. Mr. Sulloway says it is a mandate to the supreme court, telling them how they shall decide a case. What does it say? It says simply this, that this act shall be construed as authorizing the Boston & Lowell to lease these roads. Does it say that the supreme court of the state of New Hampshire shall decide this case differently from what they have? Why, gen-

tlemen, if you will turn to the first page of the General Laws of New Hampshire you will find a long chapter there which goes on to define what certain words shall mean. For instance, it says the words "spirit, spirituous liquor," or "intoxicating liquor," shall be intended to mean all spirituous or intoxicating liquor and all mixed liquors, etc. It says the words "published, publishing," or "publication," shall be intended publication in a newspaper circulated in the vicinity; and so on for a whole chapter, declaring how certain words shall be construed. Is that an infringement upon the prerogative of the supreme court? So this bill says that the Colby act shall be construed to include the Boston & Lowell within its purview. It is simply making clear beyond any question what has been attempted to be obscured here, so there shall not be any question about it in the future. That is all it means. It is no direction to the supreme court. And if it were a direction, this is the supreme judicial tribunal of the state, and if we choose to dictate to the supreme court in this way we have a constitutional right to do it.

Now, they say it is proposed to make valid an invalid contract, and that a law of that sort is unconstitutional. Well, I don't know but I will get an avalanche on this. I will read again from "Cooley's Constitutional Limitations." "On the same principle, legislative acts validating invalid contracts have been sustained. When these acts go no further than to bind a party by a contract which he has attempted to enter into, but which was invalid by reason of personal disability on his part to make it, or through neglect of some legal formality, or in consequence of some ingredient in the contract forbidden by law, they cannot well be obnoxious to constitutional objections."

This you will find on page 375. On page 376 he says,—

"The case of *Goshen* v. *Stonington* was regarded as sufficient authority to support this law; and the principle derived from that case is stated to be, 'that where a statute is expressly retroactive, and the object and effect of it is to correct an innocent mistake, remedy a mischief, execute the intention of the parties, and promote justice, then both as a matter of right and of public policy affecting the peace and welfare of the community, the law should be sustained.'

"We have already referred to the case of contracts by municipal corporations, which, when made, were in excess of their authority, but subsequently have been confirmed by legislative action. *If the contract was one which the legislature might originally have authorized*, the case falls within the rule we have laid down, and the legislative action is to be sustained.

"In none of the cases to which we have referred is it of any importance that the legislative act which cures the defect was passed after suit brought, in which the invalidity was sought to be taken advantage of. The bringing of suit vests no right to a particular decision; and the case must be determined on the law as it stands when the judgment is rendered."

Does anybody dispute the proposition that it was within the power of the legislature of 1883 to correct this defect in this law? Nobody will deny that. *And if it was a defect which they might have corrected, then this legislature may now pass an act correcting that defect, and in that way make valid contracts that are invalid by reason of that defect.*

Gentlemen, is n't it perfectly manifest from these decisions of the supreme court of the United States on all these points, that these propositions have no foundation whatever, and are not the "ragged follies" of these legal pretensions "stripped naked as at their birth"? If the gentleman from Manchester has got any avalanche, I bid him let that avalanche slide. I think I will have pretty good company under that avalanche when Gabriel is sounding his trump, and Brother Sulloway is on the other side of Jordan hobnobbing with my friend Samuel B. Page. [Applause.]

I have endeavored to show that the passage of the Hazen bill is demanded as a measure which completes the policy adopted by the state in the enactment of the general railroad law; that it is demanded as an act of good faith and honor on the part of the state towards the Lowell road and towards the stockholders of the Northern and Montreal. Now, upon plain, simple, economic principles, and as matter of ordinary business, I claim it should be passed. Supposing both of these contestants stood on equal, equitable grounds: the inquiry then is, Which of the two. judging from their past history and present attitude, is the more likely to have the disposition to serve the people of the

state well? and which of the two is in the more advantageous position to do so? In the first place, we may as well recognize the fact that no railroad will be run simply as a public benefactor. The Boston & Maine and the Lowell are not managed and will not be managed by archangels, any more than the Concord has been and is managed by seraphs. I am aware, too, of the fact that has been so solemnly asserted here so many times by counsel for the Concord road, that men die and the management of corporations changes. But, gentlemen, I hold, nevertheless, that the methods, the traditions, and the policy of a corporation are impressed upon its managers as they succeed one another, and that a railroad company acquires in some sense a character, which abides with it and distinguishes it. The Boston & Maine and Lowell have always had the reputation of being on the whole well managed companies. They have been run on business principles, and have seemed to recognize the truth that the way a railroad gets business is by making business and not by killing it. They have been enterprising, alert, progressive. They have made mistakes, no doubt, but, generally speaking, they have been uncommonly well conducted roads, and their standing to-day, as it always has been, is that of first-class companies. Mr. Stone says "the Boston & Maine has been a magnificent road in the past. Its management in the past has been like the management of the Concord road, so far as being conservative and saving money is concerned." The gentleman from Manchester, Mr. Sulloway, I know, says that the Boston & Maine and the Lowell are conducted in a most reckless and dangerous manner. He asserted over and over again that they take the earnings of those roads and put them in their pockets, and then issue stocks to pay running expenses; that this is the financial system that prevails with those roads. But did he produce a particle of evidence in support of that assertion? Not a particle. Did he cite a single instance where that has been done? Not one. It was all bald and baseless assertion. Why, gentlemen, if such a policy as this were pursued, who would buy the stocks in those roads? Whom do they sell them to? They are worth to-day $220 and $160 in the market. Whom do they find to buy those stocks at these prices? If the stocks of these roads are ground out in the lawless and reckless way the gentleman

so graphically described, is it not strange that they can get anybody to buy them? Who is it that ventures to take such stocks at these prices, with such a management as that? Is not the fact that the stocks of these roads maintain these large prices positive proof that this statement of the gentleman is absolutely groundless?

The Concord road has always been well managed, so far as making money goes; but its character, methods, and habits and traditions, from the commencement to this moment, so far as their patrons were concerned, have been of a kind that may appropriately be described by the one word *sordid*. Its location was such as to relieve it of the necessity of being energetic and accommodating; for whatever might be the condition of business elsewhere, the stream of trade and travel brought along by the confluent roads above and below it was compelled to pour through its banks, and made sure and certain sufficient income for large dividends and an accumulating surplus. It seemed to have a genius for greed and a predisposition for selfishness from the start: for it was expressly provided in its charter that no parallel road should be built for thirty years, and its fortunate environment naturally made it indifferent, illiberal, overbearing, and hard. The charge of the servant against his lord, "I knew thee that thou art a hard man, reaping where thou has not sown and gathering where thou hast not strewn," is one which aptly applies to this road.

And I affirm, as a general proposition, that its dealings with other roads have been without the slightest purpose of serving the public better, or increasing traffic, but only with a view to making the current of its income flow full and flush without effort of its own. It projected the Hillsborough and Bradford roads, not for the purpose of helping that part of the state, but to cut off and destroy the North Weare road, which, through manifold difficulties, was slowly creeping up the Piscataquog valley and opening a new route from Boston to the Connecticut valley and Vermont. Its managers forced that road into bankruptcy; got possession of it under foreclosure; smuggled an infernal clause into the belly of a law which they claimed gave them the right to discontinue the road; and crowned the iniquity one Sabbath day by an act of vandalism that reads like a tale

of Attila and his Huns. Judge Bingham says they bought it out of the surplus, and that ever since they have let the public have the use of it without charging them a single cent. Well, that is news indeed to the people living along that road. The Concord road paid $55,000 for half of that road and $195,000 worth of bonds; and the other half, that belonged to the estate of Governor Gilmore, they snatched from the creditors of Gilmore for a claim against him of $64,000, and left the rest of the creditors out in the cold. That was how they got it and paid for it. Judge Cross says that they bought it "to help the people of Goffstown and Weare." Great heavens! After destroying their road and sinking all they put into it, they say they got it to help the people of Goffstown and Weare. It reminds me of the man out in California who shot his companion to get his gold, and he had such an exquisite sense of the proprieties and courtesies of society that he then took the dead man's flask from his pocket, and in silence took a drink out of respect for the memory of the deceased! [Applause.]

Why, gentlemen, they ran but one mixed train a day over that road, with one brakeman, for twenty years, and it was so unsafe that people were afraid to ride on it, and men accustomed to travel over it made their wills and bade their wives and children good-bye. [Laughter.] About fifteen years ago they commenced, after long urging and imploring, to run two trains a day, and charged sixty cents fare from North Weare to Manchester, nineteen miles, and from $10 to $12 per car for wood and lumber. They squeezed the wood and lumber trade so dry that green wood would almost season in going from Weare to Manchester. [Laughter.] And when, in 1859, a bill was introduced here, looking towards making some restitution to the stockholders of that road and redressing their wrongs,—men who had put their scanty savings into it, and some of whom are poor to-day by reason of it,—the Concord road bought up the representative from Weare who introduced the bill, killed it, and the next year the man, in a public speech in Weare, acknowledged it, and told the people just how much he was paid. They ripped up the road from Candia to Pembroke, and so forced the coal supply of the central and northern part of the state around by Manchester. They used the Acton road, according

to the report of the Massachusetts railroad commission of 1878, simply as an instrument for forcing hard contracts out of the Lowell, and after they had got the contracts they ran but one mixed train a day over the road; and the commissioners say it was just sufficient to keep a stage-coach off the line. The monstrous, high-handed performance by which it forced freights from the Northern and Montreal roads over the Lowell, by which it damaged those roads to the extent of $250,000, and took $400,000 itself out of the people besides, has already been discussed. It is now in litigation, and there is no doubt that one main reason why it desires the passage of the Atherton bill is to get these roads, so that they can make no leases with any other road, and then compel them to abandon their suit as a condition; for you see, gentlemen, that there is nothing compulsory about this consolidation. The Concord *may do it if it chooses*, but if it *does n't* choose, the other roads are *left in the lurch*. It left the Suncook road broken off like a stick at Pittsfield, instead of putting it through to the lake and opening up a new, attractive, short route for summer tourists.

And so, I say, that in whatever the Concord road has done with other roads it has got hold of, it has had no sort of intention of benefiting the public and increasing business, but instead and simply to stop up everything all round so its profits would be sure and certain without any labor of its own. They say they are going to be real good now. They have changed and reduced the fares since the legislature met. They have been convicted of sin and repented; but death-bed repentance is always unsatisfactory, and in a railroad company won't save it for it has no soul. Besides, the fact that in the Atherton bill they show the same old determination and disposition to get all there is and permit no one else to come near, shows that the ogre is an ogre still, and that the leopard has not changed his spots. They are going to build the Lake Shore road. What for? They say in their resolution that the time has come to do so as a matter of "*protection*." Exactly—protection!—not to help the people up there, but to close that road up, and let no one else get it. And now they are posing as friends of the dear people, they are so anxious to help them, and are in a nervous shiver and cold sweat alternately for fear the people are going to be

"gobbled up." Why, not since "Rogue Riderhood" protested and protested that he was "an honest man as gets his living by the sweat of his brow," has there been anything so delightfully absurd. And so I ask you, gentlemen, which of these two roads, judging from their past history and character, is the more likely to be the more agreeable, satisfactory, and commendable public servant? I do not think it is the Concord; and instead of its presenting itself here with its hypocritical fears of outsiders, and with a bill with the engaging title of "An act to secure to New Hampshire the control of its railroads," they ought to call it An act to make perfect, perpetual, and permanent the odious and intolerable domination of the Concord corporation over the welfare of the state, and to divert the surplus of the Concord road from the control of the state treasury into the pockets of the Montreal syndicate. [Applause.]

The next question, and to my mind the only real question, if this monstrous stock-jobbing scheme were eliminated, is, Which of these two roads, the Boston & Maine or the Concord, has the better facilities, the better arrangements? which is the more advantageously situated, and prepared for doing the business of this part of the state the more cheaply, satisfactorily, and expeditiously? It is a simple, plain business question, and to it, it seems to me, there can be but one answer. In the first place, this fact should be kept in mind, that New Hampshire being distinctively a manufacturing state, a state which is obliged to import large quantities of its raw materials, must have cheap, rapid, efficient transportation service. In the next place, it should be remembered, that no two New England states are so closely identified in respect to manufacturing and commercial interests as Massachusetts and New Hampshire. At one time New Hampshire belonged to Massachusetts, and no New England state is so much dependent on another as New Hampshire is upon Massachusetts. Maine has an extensive sea-coast with numerous shipping ports. Vermont, Connecticut, and Rhode Island have short direct rail and water routes to New York city and the west. Boston is the commercial centre of New England, but it is so preëminently, so far as New Hampshire is concerned. It is the distributing point for New Hampshire products, the point whence flows the great stream of summer travel,

the source whence our manufacturing materials are largely drawn. The Boston & Maine road holds a most advantageous and commanding position in Boston in respect to terminal facilities and traffic arrrangements, and connections with various transportation lines diverging from that city or converging there.

Mr. Sulloway says "this talk about terminal facilities amounts to nothing; terminal facilities are of no great account," because the Boston & Maine are obliged to let other roads use them. Is it not strange, gentlemen, that railroad companies will pay millions for terminals in the great cities, and struggle desperately to get them, when they are of no particular advantage? All they need to do is to let some one else buy them, and they can use them just the same!

The unparalleled sloth and stupidity of the Concord management permitted the Boston & Maine to gain control of the Worcester & Nashua road, by which it commands short and direct connection with the Boston & Albany and Hoosac Tunnel routes to the West, as well as the Providence and New Haven lines to the city of New York, and on completion of the Massachusetts Central it will control an easy route to the coal-fields of Pennsylvania. These advantages are fixed and permanent. It is beyond the power of the Concord road to change them or to obtain their like. True, the Concord road may compel their service to some extent, but only on such terms, by paying for them, that manifestly place it at a disadvantage; and they make certain and changeless the character of the Concord road as a mere local line in all essential points, from which not even its fine depot in this city can rescue or redeem it. Judge Bingham says the Concord "is a bright and shining star of the first magnitude among railroads." This may be true; but every star of the first magnitude does not aspire to be a sun or the centre of a stellar or solar system;—and it is useless for the Concord road to aspire to become the nucleus or centre of a railway system. Its geographical situation forbids it. Its apathy in the past has rendered any approach to such a thing impossible now. The city of Concord might as well attempt to become a sea-port town, as for the Concord railroad to try to develop into a railroad system. The hard fact is, gentlemen, the Concord road has let its

chances and opportunities go by. They are beyond recall, and it is just as impossible to restore them by a bill as it would be to restore a man stricken by lightning by reading a chapter on health over his dead body. [Applause.]

Edmund Burke says, "The situation of a man is the monitor of his duty"—a remark full of practical wisdom. We must decide this matter, or should, as our situation and the situation of these parties seem to indicate and compel. It seems to me that the situation discloses but one course to pursue, and that is, to place the business interests of this state in direct, instant, and efficient connection with the world, instead of trying to hedge them in by creating so senseless an institution as a "New Hampshire system of railroads." In plain truth, the Concord road has been for years sitting comfortable in the sun of abounding prosperity, content to pursue its policy of "I don't know," complacently jingling its 10 per cent.,—10 per cent. dividends,—and patting, with soft, fat hands, its swelling surplus until it has gone to sleep; and when some bright, enterprising, driving young fellows started in around it and in spite of it, and stirred up some business and commenced to make things lively, the dear, delightful old gentleman woke up suddenly, and rubbing his eyes, said,—"Boys, what in the world are you doing here? What does all this racket mean? What are you doing with my railroad business? I'll have to see about this! I can't stand it to have so much noise around here. I can't sleep. I shall have to go to work and learn something about railroading. I guess I'll just step into the legislature and have them put a stop to this thing. I'll tell them these chaps are foreigners and invaders, and want to be millionaires and ride around here in private palatial cars. That will scare the legislature, I guess, so they will drive these fellows off; and then I can go down to my new depot and go to sleep again, and take some comfort out of it." [Applause.]

But it is said that New Hampshire should "control her own railroads." That cry, in every imaginable form, has been raised and uttered for the last three months. The title of the Atherton bill is, "An act to secure to the state of New Hampshire the control of its railroads"—a title, gentlemen, which I submit is designedly and purposely misleading and disingenuous, but a

title that was probably selected as being especially captivating and cunning when it was expected that the "foreign corporation" argument would be a winning card, and before the counsel of the Concord road had been apprised of what the law is in respect to the removal of causes into the United States courts. "An act to secure to New Hampshire the control of its own railroads!" Well, gentlemen, who proposes anything different? What is there in the Hazen bill which seeks to divest New Hampshire of that control? I know of one bill that seeks to divest New Hampshire of its control of the *surplus in the Concord*. I know of but one railroad in New Hampshire which she has not controlled in the past, and that is the Concord; and that not because she was unable to do so, but because of a most unaccountable forbearance and good nature. I think she proposes to control that road in the future. She took the first practical step in that direction when the Colby bill was passed in 1883. She will take another step in that direction when the Hazen bill becomes a law. But is it not a little absurd—nay, is not irony itself exhausted—when a railroad company that historically has spurned the authority of the state, that notoriously has defrauded the state, that systematically has shuffled and dodged and evaded the control of the state, should present itself here with a bill entitled "An act to secure to New Hampshire the control of its railroads"? Secure control, indeed! The trouble has been that this control has been *secured too much*. That was what suited the Concord road exactly in the past: this is what it wants now and in the future. The Colby act proposed something different. The act establishing the railroad commission proposed something different. The Hazen bill proposes something different. They propose that the state of New Hampshire shall not only control her railroads, but that she shall exercise control over them and make them her agents and servants for enlarging and diversifying her opportunities, developing her resources, and carrying their benefits in equal measure into every region within her borders.

But what is meant, precisely, by the expression "the control of railroads"? As it has been used in the course of this contest, in the newspapers and elsewhere, it is in every sense mere "sounding brass." But the expression has a substantial

meaning, a legitimate signification, and it will serve to demonstrate how hollow, deceptive, and insincere this cry is about the state's securing control of its railroads under the Atherton bill and of losing it if the Hazen bill is passed, if we stop for a moment to analyze what that control is and how it may be exercised. In the first place, the state may, if it choose, own all its railroads, and run them as a state institution, as Belgium has long done. That would be one kind of control, but a kind, surely, which the people of this state are not ready to adopt, and a kind which, when adopted, has been proved to be dangerous and unwise.

Secondly, the state may permit individuals to own railroads, entrust to them their management as a business enterprise, and in that case the railroads are the servants of the state, possessed of certain valuable rights, and charged with corresponding duties, but with those rights and those duties equally subordinate to the power of the state operating through its executive, legislative, and judicial departments. The power of those several departments of the state's authority is fixed in the constitution, unmoved and immovable by anything short of revolution. Any railroad in this state, by whomsoever owned, can exist and remain only so long as it is permitted by the sovereign will of the people, expressed through the supreme legislative power of the general court, which may at any time alter, amend, or repeal its charter, or the law under which it is organized. The details of its management, whether it be in matters of construction, equipment, train service, or charges, are within the prerogative of the general court, acting immediately or through the delegated power and authority of a railroad commission. It is subject to the processes, mandates, and orders of the courts of law and equity, and through them may be summoned to answer for any violation of its obligations, and for any injury done by it to the state or to any citizen thereof. And if any railroad operated within this state should, in the quaint language of the constitution, "in a hostile manner, attempt or enterprise the destruction, invasion, detriment, or annoyance of this state," the governor, as captain-general and commander-in-chief of the military forces of the state, may summon them forth and destroy it. These, gentlemen, in general, are the methods and means by which the

state controls its railroads. They are ample. There can be no other control. No other or different is necessary or possible. Nothing contained in the Hazen bill can abridge or modify or change it. It inheres in the sovereignty of the state, and no railroad operated within the state can escape out of that control, any more than you or I can escape from the air that surrounds us or the force that binds us to the earth.

Judge Bingham and Judge Cross try to make it appear that there would be great difficulty in getting at the Boston & Maine in case some one wanted to commence a suit against it, and Judge Cross spoke of the obstacles in the way of getting at the officials of this road. Judge Bingham said,—"This Boston & Maine Railroad is a corporation whose officers are all out of the state. You can't reach them by legal process if you want to see their books, or if you want the testimony of one of their clerks; you will be compelled, in all your business of a legal nature with the railroads, to go down out of the state to find out anything about them."

Gentlemen, I am amazed that such arguments should be seriously urged by lawyers of such eminence as Judge Bingham and Judge Cross, when every lawyer knows that any corporation, domestic or foreign, may be summoned into court by serving any one in its employ; and if a railway company has a ticket agent here, and every official is out of the state, service of a writ may be made on him. So far as examining books, they can always be examined in any proper case by order of the court; but I suppose Judge Bingham wants that thing arranged in the way the Concord has it. Their books are open to any one that comes along at any time; and if anybody has occasion to see one of the officials who happens to be busy, he can go down and rest himself on one of the luxurious couches that Judge Cross described, that are provided for rich and poor in the new depot. [Merriment.]

The men who own the stock in the railroads of the state, the directors, and managers, may live here, or in Boston, New York, San Francisco, or Australia. The railroads are here, and above and over them is the sovereign might and domination of the state. In what respect is the control of the state over the Boston & Maine and the Lowell any less or different than it is over the

Concord or the Northern, or how can it be any less or different? Massachusetts compelled the Concord road to fulfil its duty in respect to the Acton road as absolutely as though it were a Massachusetts corporation. New York enforces obedience to its laws from the Boston & Albany, Pennsylvania from the Lake Shore, Ohio from the Pennsylvania. When the New York Central proposed to consolidate the eleven separate roads which constituted the line from Albany to Buffalo, some of them parallel and competing, and when afterwards this consolidated line united to itself the Harlem & Hudson River, did the state of New York start up in dismay and cry out that an overgrown, dangerous corporation was going to swallow up the state? And when later this combined railway went into Pennsylvania, Ohio, Indiana, Michigan, and Illinois, and undertook to control and manage the great Lake Shore combination, and when, later still, it came into possession of the New York, Chicago & St. Louis, which is parallel to the Lake Shore and within sight of it, did these states cry out that they were being invaded; that an outside or a foreign corporation was coming in to "gobble up" their roads, and were going, as Mr. Chase expressed it, "to make them pay tribute to a road whose officers were outside," who had no pride in these states and no interests there, and that they proposed to have an Ohio system or a Michigan system; that Illinois should control her own roads, or that Indiana roads should be managed by Indiana men; that they did not propose to have a great company, whose officers and directors were in New York city, coming in to manage their affairs and to ruin their people? No, they welcomed the invader; they hailed the prospect;—they said, the New York Central is a powerful company; its lines touch the greatest centres of trade in New York; it has its terminus in New York city, the metropolis of the continent, the distributing centre of commerce; it has its depots, and ware-houses, and elevators, and docks there, all the facilities for handling the traffic which must have its outlet there; our products can be transported over such a line more cheaply, more quickly, more safely, to the markets of the world; and that the increased responsibility which such a company must feel and have to carry is the best guaranty and assurance that it will be managed with a view to the prosperity

and business advancement of the country it proposes to serve; for that is the surest means to secure its own prosperity. These combined consolidated roads have become a mighty continental highway. Every farm and town, village and city, within its reach has drawn from it untold advantage and unmeasured wealth. In the light of such an example as this, which is only one of a score, how short-sighted and purblind is the policy which would cut off New Hampshire from the benefits of such a system, and how absolutely foolish, how exasperatingly stupid, is the proposition that the Concord road should be permitted to sit in the lap of this valley like a Jew in the market-place, to obstruct commerce and to suffocate business under the pretence that the state will be ruined, its business destroyed, if another New Hampshire company is permitted to throw open an avenue from the Atlantic to the Canadian line!

Again: It is said by the opponents of this bill that we want a New Hampshire system of railroads controlled by New Hampshire men, whose interests are in New Hampshire, and who will be interested in building up New Hampshire business. Gentlemen, to my mind such talk as this is absolutely meaningless for any purpose except to breed a petty prejudice. What is there in the situation, the business, the interests of New Hampshire, that she should require a railroad system unique, singular, or different from that which other states require? The commerce and trade of this state are not limited by state lines. They are inextricably associated and interwoven with the trade of every state and of the world. The problem before New Hampshire is, not how she can most effectively isolate herself, but how she can most readily and easily reach the marts of the world. She cannot live to herself alone, and the proposition that she shall attempt to establish a railway system upon a plan that consults state lines is a proposition to revert to the condition of things which obtained at the close of the Revolution. Then every state undertook to circumscribe its industrial and commercial interests by state lines, with the result that every state steadily declined in all material interests. The jealousies and rivalries and consequent losses which followed disclosed the supreme necessity for a federal union; and the federal compact whose paramount object is to secure "the general welfare," and the federal con-

stitutional provision which confers upon congress the exclusive right to regulate commerce among the several states, have stood for a hundred years an historic monument of the *principle of consolidation in whatever touches the common concerns of the states*. How the unparalleled growth of every state in wealth, in population, in all the arts of a refined and advanced civilization, which has come from their unrestrained and unrestricted commerce, rebukes the attempt to revive in New Hampshire in any form a policy which she discarded a century ago!

The Duke of Wellington once said, in parliament, that in dealing with railroads it was necessary to keep in mind the analogy of "the king's highway." English railroad legislation which followed that analogy has been abandoned. It could not be made to conform to any such limitations; but the analogy of "the king's highway" was the perfection of wisdom as a guiding principle, in comparison with the proposition that the railroad legislation of any American state, in these days of continental competition for the markets of the world, shall be determined with reference to state bounds and to the residence and birthplace of stockholders!

The gentleman from Nashua, Mr. Moore, closed his speech on this motion with a sounding and rhetorical period, in which he gave this as a reason why this bill should be postponed: "In after years, when the West and South shall count their fifty millions, the centre its fifty more, and the tired sons and daughters of New Hampshire shall return to climb the hills they climbed the earliest, let no such meaningless and misplaced legend greet them as 'Boston & Maine' or 'Boston & Lowell," but let it be the 'New Hampshire Railway,' controlled by New Hampshire men."

As I listened to that sentence from the accomplished gentleman, I was constrained to ask myself, Is it possible that such an argument as that can be addressed to a New England legislature, in a New England state, the state that claims the home of Webster, within sight of his birthplace, under the shadow of his statue, and in this year of our independence the one hundred and eleventh? Can it be that a cultivated New Englander will argue like that? Why, gentlemen, I can conceive of nothing better calculated to make a returning son or daughter of New Hamp-

shire "tired" than such talk. And if such a legend as the gentleman proposes is to be written over the doorway of the Granite state, I fancy that a son or daughter returning from the South or West, on seeing it, would say,—"Well, they have fenced in the dear old state. I guess I will go back where the air of freedom is still clear and the fountains of liberty are still sweet and pure." [Applause.]

Again: It is said that if the Boston & Maine road shall become the lessee of the Northern and the Montreal, we shall be delivering ourselves bound into the hands of a great corporation, which will control in its own interests the legislative and judicial powers of the state, making and unmaking laws to suit its own purposes and the ambition of its managers. It was precisely this sort of argument and prophecy that was used in England during the discussion of the problem; and how completely these arguments were refuted and these prophecies falsified by the results which followed, every one knows. I have shown you how completely subject to the authority and control of the state every and all railroads are, lying within the state, irrespective of who or where the stockholders or directors are. But, gentlemen, what is the necessary inference that must be drawn from the proposition to which I have referred? Why, this, that no legislature in New Hampshire can be elected that will not be venal and purchasable, no judiciary appointed that will not be corrupt; and that the people of this commonwealth have not enough civic virtue, honesty, principle, and integrity to preserve them from the contaminating and destroying influence of money, and would sell their birthright of constitutional liberty. Gentlemen, though only an adopted citizen of this state, my heart thrills with pride when I recall the history of her early struggles, the triumph of her industries over the forbidding and sullen obstacles of nature, and her growth into the beautiful, prosperous, and happy republic that she is to-day. The men who fought their way into the mountain wilds of the province of New Hampshire, and undertook the work of building up a Christian civilization, were of no common stock, of no low and vulgar strain. They were men of hardy virtues, who brought hither the truest traditions of personal and political freedom, and impressed them at once and forever upon the character of

the commonwealth. None of the colonies were quicker to discern the encroachments of the crown than New Hampshire, none more instant to repel their advances; no clearer voice than hers was raised to protest against them; and on the field where the first blood of the Revolution was shed, as on the last where England's pride was humbled, her sons were found to resist them. When the Revolution was ended, although her people were the most impoverished and bowed down of all the colonists by the losses of the war, the most distressed and debt-burdened, it is to her eternal glory, and an enduring memorial to her integrity, that New Hampshire alone, of all the New England states, refused to compromise her honor by issuing a worthless paper currency. In every vicissitude through which the nation has passed from that hour to this, the sturdy, substantial, sinewy little state of New Hampshire has ever been found steadfast, loyal,—true to whatever makes for the welfare of herself and the great republic which she helped to establish. Shame, shame upon the son of New Hampshire who shall tell us that the principle, the fidelity, the virtue, the honor of the state are fading away or have departed; that her people to-day are any less watchful of their liberties than the men who marched to Bunker Hill or to Bennington; or that any man or combination of men, corporation or corporations or syndicate, can steal away her freedom or overthrow her sovereignty, so long as summer skies shall smile above her lovely valleys, or winter storms shall sweep her heaven-aspiring mountains. [Applause.]

Gentlemen, I have listened to all of the speeches of counsel for the Concord road; I have read all the testimony they have produced in opposition to this bill; and in all of the speeches and testimony I have not found a single argument or reason of substantial merit, or that is calculated to influence the judgment of any candid man. Out of all the thousands of patrons of the Boston & Maine and the Lowell roads, which have been described and depicted as formless monsters, how many have been found who would come here and utter a word against them under oath? Just four. And who are they? Ira Whitcher, who complained because the Boston & Lowell road, rather than let his trade be done by a Vermont road, hauled his lumber from Woodsville to Lebanon, a distance of one hundred and sixty-three miles, for

the same price that was charged by the Passumpsic for fifty-two miles; A. L. Brown, who by overloading cars, and by means of a secret unconscionable contract had been for years beating every honest lumber dealer in the state, until he was compelled to stand on equal ground with all other dealers; E. C. Morse, of Haverhill, Mass., whose zeal for the welfare of his city was measured by a four per cent. investment; and Tom Smith, whose ethereal, sublimated organism had been shocked at the sanitary condition of the Boston & Maine road, notwithstanding the New Hampshire state board of health had commended "its general excellence." The speeches of counsel were not arguments designed to explain and prove the general and comprehensive advantages which would accrue to the state by a consolidation of these roads under the Concord management as against the Boston & Maine. They were the arguments of despair, appeals to the most unworthy motives, to the fears, the passions, the prejudices of men. The key note of Brother Chase's speech was "foreign corporation." The text of Brother Mitchell's was "invaders," "violators of the law." Judge Cross had nothing better to offer than "unmitigated cant" about millionaires and Goulds and Vanderbilts; and Judge Bingham's four-hour speech was chiefly devoted to denouncing imaginary stock-watering, and arraigning gentlemen who had acted on his advice. Not a business man of Concord or Manchester or Nashua was willing to go on the stand and say a word in commendation of the Concord management. Not a citizen of Dover, who said that the Hazen bill should be killed, ventured to come on the stand and say why we should "kill it." They preferred to testify in a newspaper, and to be cross-examined by a reporter. The methods generally that have been pursued by the Concord road in the conduct of their case have been the methods of desperation, and characterized by an insincerity that has become more and more evident and emphatic as the exigencies of their cause have grown daily more pressing and imminent. They have been the methods of ward meetings and of ward politicians. Witness how the lobby, the gallery, the aisles, and the seats of this hall were thronged night after night and day after day with men who were brought in here to manufacture applause and to create an apparent public sentiment! Witness

the disgraceful performance enacted upon this floor when retainers and ex-judges and members of congress poured into these seats and filled these spaces, and at a given signal broke into cheers and shouts and applause that called forth the rebuke of the speaker, for the purpose of stampeding this house out of its senses! We have heard a great deal said about some outside organization that was trying to come into the state to corrupt us or ruin us; but, gentlemen, when we have in our midst a domestic growth, wholly native and indigenous, that possesses such qualities and such resources as have here been exhibited and revealed within a few days, I do not think we have much to fear from anything of foreign growth or imported character;—and if the state has got to be dominated by any organization of that kind, for Heaven's sake let its home and habitation be in Boston and not in the capital city of this state!

There has been nothing sterling, or ingenuous, or manly about them. They have been specious and paltry, and evasive from the beginning until now. They have recalled to my recollection a hundred times the old couplet,—

> "All seem infected which the infected spy,
> As all seem yellow to the jaundiced eye."

Mr. Lincoln once said, "You can fool all of the people some of the time; you can fool some of the people all of the time; but you can't fool all of the people all of the time." I think this observation will be verified by the results of this contest. All of the people of this state will not be fooled all of the time in respect to its railroad interests by the Concord road.

Now, gentlemen, let us cast aside all of the irrelevant and immaterial issues that have been imported into this matter for the purpose, I believe, of obscuring what, it seems to me, are the only two issues of substantial merit involved, and meet and decide them calmly and dispassionately. Let us not be deceived by any of the cheap political arts that have been used to influence our action; but let us vindicate the honor and integrity of the state. Let us seize the noble opportunity which we have for advancing her prosperity. Let us keep her face to the future, and not turn it backward to the past, and to a return to the narrow, colonial, insular policy that she left behind her four

years ago. Above all, let us not adopt any such miserable un-American policy as would attempt to circumscribe our interests by state lines and repel the resources and enterprise of neighboring states and fellow-countrymen by uplifting the motto, "None but New Hampshire people need apply." Let us rather swing wide our gates to the world and to mankind, and inscribe above them those words which even a heathen queen of Carthage had the wisdom to utter to Æneas and his storm-tossed allies,—

"Tros Tyriusque mihi nullo discrimine agetur,"—

"Trojan and Tyrian shall be treated by me without any discrimination." [Loud and long continued applause.]